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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 66

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,

Petitioner

v.

THE UNITED STATES OF AMERICA, EX REL., THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY,

Respondent

APPENDIX TO RESPONDENT'S BRIEF

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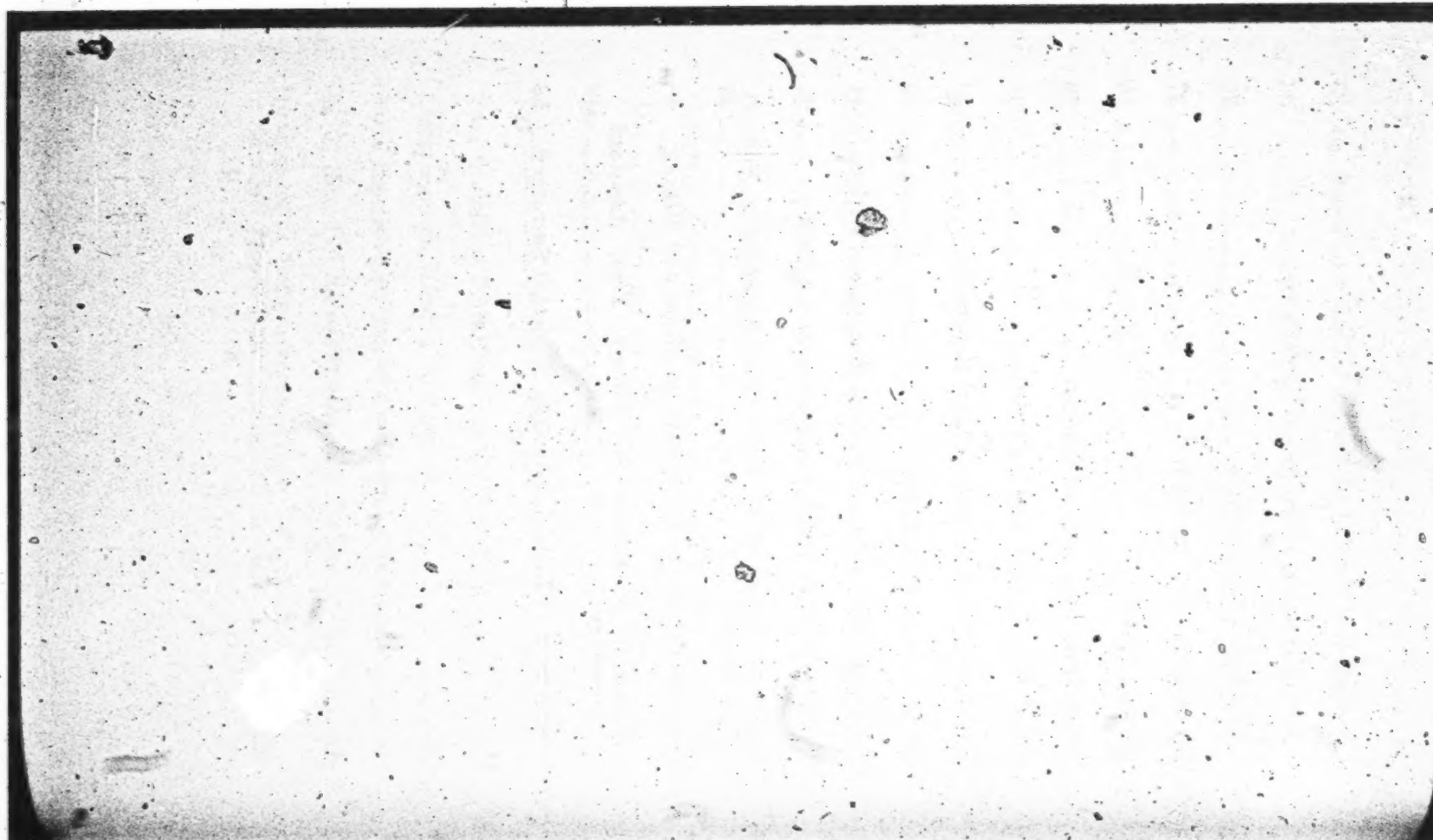
APPENDIX

Legislative History

	Page
General Statement	1
Act October 5, 1918	2
The Essential Substance of the Act	2
Legislative History of the Act of March 2, 1919	4
Title of Bill, Senate	5
Bills in the House	5
Progress of the House Bill in the Senate	6
Statement of Senator Smoot	7
Return of the House Bill	9
Conference Committee Action	9
Congress Approves Second Conference Report	10
Action of the House on Second Conference Report	11
Third Conference Committee	12
The House Proposes a Redrafted Plan	12
This Redrafted Plan Broadens the Relief	13
Congressman Wingo's Statement	15
Final Result of Action of Conference Committee	16
H. J. Res. 170 Substantiates Our Claims	18
Statement of Congressman Wingo Referring to What Senator Smoot Said	19

Section 5 of the Act of March 2, 1919, as Passed ____ 23
Administration of the Act of 1919 Criticized ____ 26
Findings of Committee ____ 26
Act of November 23, 1921 ____ 27
Suits in Court ____ 28
Letter from Secretary of Interior ____ 29
Act of June 7, 1924, and Its Purpose ____ 31
The Opinion of Attorney General Sargent ____ 32
Act of February 13, 1929 ____ 39
The Congress in Effect Approves Respondent's Claim ____ 41
The Report of the House Committee on Act 1929 ____ 44
Petitioner Agreed that Legislation Authorizing Suits Was Proper ____ 47
Hearings Before the Committee on Mines and Mining ____ 48
Statement of Edward C. Finney, First Assistant Secretary ____ 49
Statement of John H. Edwards, Assistant Secretary ____ 56



APPENDIX

LEGISLATIVE HISTORY

General Statement

While in our opinion there is no such ambiguity in the statute here for construction as justifies a resort to legislative history, we nevertheless present herewith a sufficiently comprehensive outline of such history to enable the court, if it should so desire, to examine it. An accurate statement of such history is perhaps necessary to meet incomplete and consequently misleading references thereto in the brief of the Petitioner.

A state of war having been on the 6th day of April, 1917, declared to exist between the United States and the government of Germany, the need for war minerals in this country, most of which were imported from abroad, became immediately imperative. At the same time it became apparent that the government could not and should not rely upon the continuance of such importations. Not only were such importations largely shut off due to the activities of the German U-boats, but our ships and those of our allies which could otherwise have been used in their transportation were required to carry soldiers and supplies to France. So we were forced to produce these minerals in this country.

How best to accomplish such production was one of the vital questions that confronted the govern-

[illegible] in the early days of the war. Large sums were devoted to advertising the needs of the government in this respect and in encouraging and stimulating immediate large-scale production of these minerals. Cabinet officers and other important agents of the Nation pleaded for such production. The question was discussed elaborately in Congress, beginning in the spring of 1918. The resulting bill was finally passed and approved October 5, 1918. This act was entitled:

Act October 5, 1918

"An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The Essential Substance of the Act

The act is printed 40 Stat. 1009, and following. In Section 1 thereof it is stated:

"By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production, and to provide for an equitable, economical, and efficient distribution of the following-named minerals, substances, and articles, namely, [illegible] and [illegible] products, metals, alloys, [illegible] and components thereof, [illegible] explosives [illegible] as the President may, from

time to time determine to be necessary for the purposes aforesaid, and as to which [illegible] at the time of such determination, a present or prospective inadequacy of supply. The aforesaid substances mentioned in any such determination are hereinafter referred to as necessaries."

Section 2 authorized the President to purchase such necessaries and to enter into contracts for the production thereof. The section further makes certain provisions for the cost price, which shall be at a price not "less than the purchase or cost of production thereof."

Section 3 authorized the President to take over mines producing the named minerals, and provided:

> "The United States shall make just compensation, determined by the President, for the taking over, use, occupation or operation by the Government of any such necessaries or any such land, deposit, mine, smelter, or plant, or part thereof."

This section also provided that if the just compensation to which the owner was entitled could not be agreed upon with the President, suit therefor or for a part thereof was authorized.

Sections 4 *and* 5 relate to administrative matters not material here.

Section 6 appropriates the sum of $50,000,000 to "be used as revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including just compensation under section three."

Sections 7, 8 *and* 9 refer to administrative acts and are not material here.

Section 10 provides for a determination of the operative force of the act, which was upon the proclamation of peace by the President.

Sections 11 *and* 12 are not material to the issue here.

This act in effect would have authorized the President or his agents to enter into whatsoever arrangements were deemed necessary for procuring an adequate supply of these war minerals. Had the war continued, the President under this act would have been enabled fully to protect the men who answered the call of the Government to produce these minerals. However, as the act was approved so near the date of the Armistice, it was never resorted to.

With the cessation of war, the demand for these war minerals practically ceased, and the producers were faced with immediate and heavy losses. How to give "just compensation" (Section 3, Act of Oct. 5, 1918, *supra*) to those persons who at the request of certain named agencies of the government had in effect surrendered their properties to the government, was the question then presented to Congress.

Legislative History of the Act of March 2, 1919

After hearings, and on the 23rd day of December, 1918, Senator Henderson introduced a bill entitled,

Title of Bill, Senate

"A Bill to supplement an Act of Congress approved October fifth, nineteen hundred and eighteen (public numbered two hundred and twenty), and to authorize the Secretary of the Interior from the funds appropriated by said Act to determine, adjust, and pay losses sustained by investments preparatory to production of war minerals mentioned in said Act."

This was called Senate 5234 and was referred to the appropriate committee.

Bills in the House

In the House on December 24th, 1918, Mr. Foster introduced an identical bill, known as H. R. 13498, and this was referred to the Committee on Mines and Mining of the House.

On December 7th, 1918, Congressman Dent introduced a bill in the House, known as H. R. 13274, the purpose of which, as expressed in the title, was, "To provide relief where formal contracts have not been made in the manner required by law." This bill purported to authorize the Secretary of War to adjust and pay claims under contracts with the government for war supplies, where in the rush and hurry of the war, the requisite formalities had not been complied with. The moral obligation of the government to reimburse those who had lost because they had complied with the demand of their country was recognized, and the House debated whether to give the administration of the relief to the Secretary of War or to a newly created commission. On January 9th, 1919, the House passed the bill substan-

tially as introduced, leaving the matter in the hands of the Secretary of War.

Progress of the House Bill in the Senate

In the Senate H. R. 13274 was referred to the Committee on Military Affairs, which reported it out with an amendment replacing everything after the enacting clause. In the debate which followed, the question was again raised as to whether the Secretary or a commission should administer the relief. Much discussion was also had on the question of compensation for profits lost by the cancellation of the contracts upon the termination of the war; and an amendment was adopted which it was thought would protect against claims based on possible profits.

At this stage, on January 28, 1919, Senator Henderson offered as an amendment an entirely new Section 7, authorizing the Secretary of the Interior (the other sections of the bill had to do with the Secretary of War) to pay the losses of war minerals producers. The wording of this amendment was identical with Senate Bill 5234 above referred to. The first part of this section read as follows:

> "That the Secretary of the Interior be, and hereby is authorized and directed to ascertain and determine the amount or amounts of money heretofore invested and obligations incurred by any and all persons and investors for producing or preparing for producing or acquiring property for producing within the United States, to supply the urgent published and evident needs of the Nation during the War, any ores, metals,

or mineral substances mentioned and enumerated as follows:"

When the clerk finished reading the amendment, Senator Smoot, who was not a member of the committee having the bill in charge, made a comment upon certain words used which has been frequently quoted by counsel for Petitioner as showing an intent on the part of Congress to eliminate from the relief granted any compensation for losses sustained in the purchase of real property.

Statement of Senator Smoot

Senator Smoot said (Congr. Record, p. 2213):

> "I want to call the attention of the Senator from Nevada to the words 'or acquiring property for producing.' It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals, we should not authorize the Secretary of the Treasury to go into the question as to what he paid, and whether he lost upon the purchase price of that property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far. I will ask the Senator if it would not be very much better to strike out the words 'or acquiring property for producing'?"

Senator Henderson accepted the suggestion.

If this colloquy stood alone and represented the final action of Congress, it might throw light upon the intention of that body. In fact, however, it was a mere offhand expression of personal opinion arising in the preliminary stages of the development of

this legislation, and subsequent action by Congress shows that the opinion expressed by Senator Smoot was ultimately rejected.

We shall refer later (pp. 15 ff. and 20 ff.) to Congressman Wingo's testimony in the hearings before the House Committee on Mines and Mining in which he explains this suggestion of Senator Smoot as not being fully considered by its author and having later been virtually withdrawn.

In fact, the whole amendment of Senator Henderson came as a surprise to the Senate and on request of Senator Curtis (Congr. Record, p. 2213), the debate on this amendment went over until the next day so that he and others could become familiar with it. It is evident that Senator Henderson refrained from debating the merit of Senator Smoot's suggestion at the time because he was interested primarily in having the measure passed in some form so that it could go to conference where it was apparent it must go, to be worked over carefully by those more familiar with the question. This is shown by the fact that the next day, January 29, 1919, debate continuing and other suggestions being tendered, Senator Henderson stated (Congr. Record, p. 2273) that he would accept amendments "in order that we may get to conference with it."

On the same day (January 29th) Senator Chamberlain, Chairman of the Committee on Military Affairs, accepted Senator Henderson's amendment as part of his committee's amendment to H. R. 13274, and on January 30, 1919, the Senate passed the bill with the committee amendment which con-

tained as Section 7 thereof Senator Henderson's measure for the relief of war mineral claimants.

Return of the House Bill

When the action of the Senate was reported in the House, Mr. Dent moved that the House disagree with the Senate amendments and ask for a conference. Mr. Dent objected to this entire Section 7 on the ground that it was "extraneous" and "entirely foreign to the original purpose of the bill." (Congr. Record, p. 2440). Mr. Hamlin also strenuously objected to the inclusion of the principle of Section 7 in this bill in any form; and asked that the House have a chance to vote on it before it was agreed to. Finally the motion to disagree was passed when Mr. Dent said that before the House conferees would agree to Section 7 in any form, the House should have a chance to vote on it.

Conference Committee Action

In a few days the conferees reported to their respective houses that they were agreed upon practically everything in the bill except Section 7; that the House would not agree and the Senate would not recede. When this report was made in the House a long debate was had. Time and again in the discussion the obligation of the government to give relief to the mineral claimants was emphasized. (Congr. Record, Feb. 5, 1919, pp. 2766, 2768.) Finally another conference was agreed upon. But a motion by Mr. Howard to instruct the conferees to agree to Section 7 was rejected. The Senate already had asked for a further conference.

In the House debate of February 5th, it was apparent that a good part of the objection to Section 7 was due to its particular wording. See remarks of Mr. Steagall, p. 2767; Mr. Fields, p. 2768; and Mr. Kahn, pp. 2769, 2770. So the second conference sought to agree on a wording that would be acceptable to both houses. On February 11th, the Conference Committee reported to their respective bodies an agreement upon a wording for the whole act. The first four sections of this conference measure dealt with war contracts, adopting substantially the wording of the House bill. Section 5 of this conference measure contained the war minerals provision and replaced the Section 7 referred to above. The first part of this conference section read as follows (Congr. Rec. p. 3353):

> "That the Secretary of the Interior be, and he is hereby authorized to adjust, pay or discharge any agreements express or implied upon a fair and equitable basis the amount or amounts of money heretofore invested or contracted to be invested and obligations incurred in good faith by any and all persons, firms or corporations for producing *or in good faith acquiring property for producing* within the United States for the purpose of supplying the urgent needs of the Nation during the War, any ores or mineral substances mentioned and enumerated as follows:" (Italics ours.)

Congress Approves Second Conference Report

The above quotation shows that the italicized words in this conference section contain the phrase, "acquiring property for producing," which pre-

viously had been omitted at Senator Smoot's suggestion. The only change in the phrase is that the qualifying words, "in good faith," have been added. In this form the section had been agreed to by the Senate conferees, Senators Chamberlain (who had charge of the whole bill in the Senate), Fletcher, Knox, Thomas and Warren. These men, appointed by the Senate to represent its point of view upon this piece of legislation, must have ascertained in advance of any such action upon their part that the Senate as a whole had no opposition to the substance of this phrase; otherwise they would never have consented to the bill in conference. This confirms the correctness of Mr. Wingo's explanation that all Senator Smoot was interested in was in seeing that no fraudulent or speculative claim should be eligible for reimbursement, and that Senator Smoot did not believe that all losses arising from the purchase of real property should be excluded. The additional qualifying words "in good faith," which had been added in this second conference, evidently satisfied the Senate with this proposal.

Action of the House on Second Conference Report

In the House, however, the report as a whole was not so favorably received. In the debate that followed its reading, it was evident that many of the members thought the stimulation clause was too broad; that all sorts of claims would come in for which the government was not responsible. (Congr. Rec., Feb. 14, 1919, pp. 3353 ff.) There was some feeling also that the Senate should not have included

any such relief measure in the war contracts bill. *But there was not one word said in the debate about deleting the provision covering losses suffered in acquiring property for producing.* The appropriateness of such a provision, if relief of any sort were granted, was not even questioned. Finally the House passed a motion to recommit the report to the conferees with instructions not to agree to old Section 7 (new Section 5) of the Senate amendments in any form.

Third Conference Committee

The third conference reported to the House on February 21st that they were unable to agree; and on February 25th, the matter was called up for debate. (Congr. Rec., pp. 4257-4267.)

The House Proposes a Redrafted Plan

Mr. Foster, of the Committee on Mines and Mining of the House, stated that his committee in a morning session had agreed upon a measure for war minerals relief; and he moved that the conferees be instructed to agree to the first four sections of the second conference report (dealing with war contracts) and to propose, for acceptance by the Senate conferees, a new Section 5 in a revised form proposed by his committee. This proposal was accepted and the conference measure thus arrived at ultimately became the law.

In this House debate, the proponents of the new measure pointed out that relief thereunder was now confined to producers of only four metals; that

direct stimulation to produce must now be shown; and that the bill limited payments to *net losses* and to those who produced or prepared to produce at the request of the Government. The third and fourth provisos of the act were stressed as prohibiting payments for "holes in the ground" and speculative ventures of any kind, and as requiring that the property for or upon which expenditures were made must have contained one or more of the minerals in commercial quantities. No suggestion was made in meeting the opposition to this measure that the phrase "by reason of producing or preparing to produce" was in any sense different from, or narrower than, the phrase "for producing or acquiring property for producing" which had previously been agreed on in conference. It is certain that if the Committee on Mines and Mining, interested in overcoming strenuous objections to this legislation in the closing days of Congress, had considered that this change of phraseology limited the obligation of the Government any further than the phraseology used in the conference report, it would have urged such limitation as an additional answer to the objections to the bill.

This Redrafted Plan Broadens the Relief

On the contrary, the changes of phraseology made by the committee broadened the scope of the relief intended to be afforded by the act. Under the earlier bill, as agreed on in conference, authorizing the payment of expenditures "for producing or acquiring property for producing," there was no relief to be afforded the claimant who did not produce or

acquire property for producing, but who expended money and labor in otherwise preparing to produce.

But under the phraseology prepared by the House Committee on Mines and Mining, which was thus finally enacted, relief was afforded for the net losses occasioned as well as by expenditures for labor and other like expenditures, as expenditures in acquiring property in preparing to produce. That the change of phraseology broadened the scope of the original bill in this regard is further conclusively shown by the fact that the bill as first introduced, and as reported out of conference, carried no provision that the claimant should satisfy the Secretary that his expenditures were for, or upon property, containing one of the named minerals in commercial quantities. This safeguard was first put in the bill by the Committee on Mines and Mining when it was changed to the theory of paying only the net losses "by reason of producing or preparing to produce" from the theory of paying the expenditures "for producing or acquiring property for producing."

This Committee, after going over the bill "step by step and paragraph by paragraph," raised the limitation of payments from the few cases arising from "acquiring property for producing" to the more general class of those who suffered losses "by reason of preparing to produce." This more general class embraced the class of those "acquiring property to produce." And the Committee intended by this [illegible] to include those who had by "acquiring property for production" in accordance with, for the first time, [illegible]

serted in the law that a claimant must satisfy the Secretary that his expenditures were for property containing one of the minerals in commercial quantities and his investments were not made for speculation, but in a legitimate attempt to produce, without limiting such expenditures and such investments to other than those in acquiring mining property by lease or purchase. The moral obligation of the Government to repay these losses was also strongly urged.

Congressman Wingo's Statement

Mr. Wingo, who was a member of the Committee on Mines and Mining and who helped draft this final wording of the law, said in the course of the debate (Congr. Rec., p. 4265):

> "What other limitation is there that you shall not consider any speculative profit?"

The thought recurs again and again as one reads these debates and studies the changes in the wording of the different measures, that it was protection against speculators and profiteers that the members of the Congress were aiming to achieve. The fact that a loss was incurred in acquiring property for producing rather than in preparing for producing a mine which one already owned, was immaterial to them, provided a *good faith* effort was shown and it was also clear that the investment was not for speculative purposes.

This was the idea which finally prevailed in the House [illegible] was not a scheme to pad the pockets of speculators at the expense of the Government;

that it was an effort to reimburse those who had suffered losses in a good faith attempt to meet the urgent needs of the Nation in the prosecution of the war. Mr. Hamlin, who formerly opposed the relief, stated that he was now willing to vote for it because (p. 4263):

> "All of these safeguards have been put in there. * * * I think the House knows that I do not look with favor upon these claims, but we are safeguarding it, and now propose to pay only men who were induced by agencies of the Government to *invest* their money, in order to help the Government in this extremity of the war and to pay only actual net losses—not speculative but such net losses as he can possibly show that he has sustained. * * *
>
> "* * * If the Government agencies did the things set out in the first part of this amendment, then the actual net loss that man or firm sustained, with all these deductions, ought to be paid, and for these reasons, I am going to vote for this amendment."

Final Result of Action of Conference Committee

Mr. Foster's motion was passed. (Congr. Rec., Feb. 25, 1919, p. 4267). The next day the Senate agreed to another conference. The conferees immediately agreed upon the House measure and their report was accepted and agreed to by the House on February 27th. (Congr. Rec., p. 4500).

When the report was made to the Senate on February 27th it was quickly agreed to. A few of the Senators, however, had questions to ask of Senator

Chamberlain, the sponsor for the bill in the Senate. One, particularly, asked if the bill still contained the provision against payment, under the war contracts sections, for loss of possible profits, which provision had been inserted in the act by amendment from the floor. (See *supra*, page 12.) This was Senator Chamberlain's answer (Congr. Rec., p. 4413):

> "The matter has been back and forth between the two houses for a week or more; and in order to reach any agreement at all we practically took the House Bill as a basis for reaching an agreement. If that language has been left out, it was left out because it was not in the House Bill."

This, it is submitted, is an open confession that the Senate amendments were completely discarded as a basis for reaching an agreement on the bill. It also shows that not even the points specially made in the Senate were preserved in the final bill. Discussion in the Senate and the various Senate forms of bills should not, therefore, be considered in the construction of the act as actually passed. The Senate capitulated to the House so completely that even the Senate sponsor did not know what was in the bill at the end. Only the discussions of the House members can throw any light on the construction of this language. It seems plain, therefore, that what was said in the early stages of the Senate form of the bill about the Henderson amendment, whether by Senator Smoot or anyone else, is entirely immaterial.

In the light of the foregoing, it is difficult to see how Senator Smoot's remark in connection with the

Henderson bill should ever have been thought important as bearing upon the construction of the measure that passed and became the law.

The bill pending to which Senator Smoot made reference was not the bill passed. The words which Senator Smoot objected to, in the first instance, were later reinstated with the approval of the Senate conferees, and then further broadened by the House. The Secretary in his brief in *Work v. United States ex rel. Rives*, 267 *U. S.* 175, No. 783, October Term, 1923, at pages 12 ff., called attention to an opinion of Secretary Payne (Document 885, 66 Congress, 3rd Session, p. 43) in which a statement of what Senator Smoot said was made. This statement of Secretary Payne was referred to arguendo by this court in the Rives case, supra. Secretary Payne did not have before him the full history of the Act of March 2, 1919, nor was this full history made available to this court prior to its decision in *Work v. Rives*, above.

H. J. Res. 170 Substantiates Our Claims

What Congressman Wingo, a member of the House Committee on Mines and Mining which framed the actual bill as passed, has to say about the meaning of the language used and the purpose of the act is important. The Secretary of the Interior, after the passage of the Act of March 2, 1919, appointed a commission to administer that act. Claimants under the act brought the matter to the attention of the Congress, criticising the commission vigorously, both as to the supposedly allowances made and considerations put upon the act. The action of the House

Committee on Mines and Mining removes the doubt referred to by Secretary Payne. The Committee had hearings which are printed under the title, "Hearings Before the Committee on Mines and Mining, on H. J. Res. 170."* The hearings were begun October 22, 1919, and the report contains 594 printed pages.

In the course of the hearings the statement of Senator Smoot was referred to and came up for discussion. Congressman Wingo referred to the statements of Senator Smoot, and gave a history of what actually occurred.

Statement of Congressman Wingo Referring to What Senator Smoot Said

On page 555 of the Committee's report, referred to above, Mr. Wingo said:

> "Senator Smoot, if he had adhered to his original position, would have been against the conference report; he would have been against everything, but Senator Smoot is a very practical man; after he made this short two or three-minute speech in the Senate he got to investigating the question. It is a matter of common knowledge that the claimants showed him the error of his position by private conversation; it is a matter of common knowledge that the claimants went around here and explained to members of Congress, and explained it to Senators. So Senator Smoot afterwards found that there was a just and proper demand. Now let me show you—I will read you from the very

*A copy of the report of these hearings was on the suggestion of Mr. Chief Justice Taft, left with this court on the argument of *Work v. Chestatee*, 267 U. S. 185.

utterances that he made at the time he objected to this language. It will show you that he is objecting to the very thing that the war minerals relief bill does. On January 28, 1919, page 2311 of the Congressional Record, he says:

"I want to call the attention of the Senator from Nevada to the words 'or acquiring property for producing.' It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals, we should not authorize the Secretary of the Treasury to go into the question as to what he paid and whether he lost upon the purchase price of that property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far.'"

Continuing the discussion, at page 556, Mr. Wingo said:

"Mr. Smoot said that that would be going too far because he suffered loss by reason of the war stopping sooner than he thought it would. Now, what was the whole gist of the war minerals bill? It was to protect the man that we were going to get to produce these minerals, against that very loss by the sudden stoppage of the war, by authorizing contracts for two years. It was even debated upon the floor that one day before the war stopped, under the original $50,000,000 bill, a contract might be made for two years, so that there would be the Government operating and paying, if necessary, money and purchasing ore for one year and 364 days after the war stopped because the day before the war stopped, under that bill, a two-year contract

would be made by the Government. Now that was the very object of the $50,000,000 bill. Senator Smoot says here that he is opposed to that object, but subsequently he sees the error of that position. As a practical man he has gone into the fact, and he sees it, so subsequently what does he do? He agrees to a conference report that not only is broader than the original thing that he objected to, but specifically says that you may consider losses that were occasioned by expenditures either 'for or upon.' Can you conceive of any stronger language? I would say: 'You are my agent. I am going to give you written authority to go out and I am going to back you up and authorize you to make expenditures for or upon property.' Now, I come along later and I say: 'Yes; you went to put up an office in New York City. I can stand that, but when you went out and spent the money to do the main thing that I wanted you to do, to get hold of the ore by purchasing the legal record title, or getting a lease on it—no; I can't stand that. I repudiate that. You didn't have any such authority from me.' Such a suggestion and such an interpretation is repulsive to every legal mind."

And concluding the discussion, at page 557, Mr. Wingo said:

"I was frank in stating that we had liberalized the proposition by simply putting on the broad proposition that the Secretary of the Interior should be authorized to do equity, and that we would only throw certain broad restrictions around him, and that inasmuch as we were going to do equity, I myself, in order that there might be a protection to the Government

against that wide-open liberal provision, thought that we should have a provision in there that would authorize the Government to sue in case a fraudulent claim put over by such an interpretation."

Having, at page 558, been asked a question as follows:

"Why was the provision put in that no claim would be paid for land purchased for purely speculative purposes? What did you mean by that if you didn't intend in the original act to allow for property legitimately purchased?"

Mr. Wingo answered as follows:

"The inverse of a proposition is always stated by the direct statement of it. In other words, if I say that you shall not stay in the room, that is another way of saying that you shall get out of the room, and if I say that you shall not allow for speculative investments, that is an affirmative declaration that you may allow for investments not speculative. It doesn't take a lawyer to see that."

This history shows not only that his statement referred to another statute, but that Senator Smoot later understood the situation and agreed to language equally as broad, and, we believe, broader, than the original language to which he objected, and that the whole was protected by the provision against speculative investments.

Section 5 of the Act of March 2, 1919, as Passed

"Sec. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the act of Congress approved October fifth, nineteen hundred and eighteen, entitled 'An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of these ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply.'

"The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said act of October fifth,

nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however*, That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith, or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized

in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

"That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

"That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

"Approved March 2, 1919."

Administration of the Act of 1919 Criticized

Reference has been made above to the hearings entitled H. J. Res. 170. After those hearings were completed, and on March 25, 1920, Mr. Garland, from the Committee on Mines and Mining, submitted to the Congress the report on the Amendment to the War Minerals Act. This report criticized severely the former commission for its illiberal treatment of claimants, and said:

Findings of Committee

"The Committee is of the opinion that the Commission erred in its interpretation of the legislative intent, its interpretation and application of the provisions of the Act and the application of the provisions of the Act and the application of the provisions of the law to the facts."

The report then copied portions of the Act of March 2, 1919, and said:

"The language of the act as above quoted is clear, and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out and a 'just and equitable' settlement can be had of every legitimate claim. For the correct rule of interpretation and application of such a statute see *United States v. Dixon* (15 *Peters*), *United States v. Union Pacific Railroad Co.* (91 *U. S.*), *United States v. State of New York* (160 *U. S.*), *Smith v. Townsend* (148 *U. S.*), *District of Columbia v. Washington Market Co.* (108 *U. S.*), *McClure v.*

United States (119 U. S.), *Monongahela Navigation Co. v. United States* (148 U. S.), *Stewart v. Kahn* (78 U. S.). For the reasons above stated the committee has not thought it necessary to amend the original act."

The warning given by the committee of the House not being heeded by the Secretary of the Interior, and his commission continuing its narrow construction of the act, Congress again took the matter under consideration and passed an act approved November 23, 1921, as follows:

Act of November 23, 1921

(Public—No. 99—67th Congress)
(S. 843)

"AN ACT to amend section 5 of the act approved March 2, 1919, entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes.'

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 5 of the act approved March 2, 1919, entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' be, and the same is hereby, amended as follows:

"Add to the first paragraph of section 5 the following proviso: '*Provided*, That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of

the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation, or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation of said act.

"If in claims passed upon under said act awards have been denied or made on rulings contrary to the provisions of this amendment or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts.'

"Approved November 23, 1921."

Suits in Court

After the passage of the Act of November 23, 1921, relator and others claiming losses because of the purchase of property, believing that the Congress had indicated an intention for more liberal terms, again appealed for an allowance to the Secretary of the Interior. Later this was denied and in order to test the question, Logan Rives filed in the Supreme Court of the District of Columbia, in 1923, a petition for a writ of mandamus. That court held that the writ should issue and that purchase of property items were allowable. An appeal was taken to the Court of Appeals of the District of Columbia and on January 7, 1924, the judgment was affirmed.

While this decision stood, and on February 21, 1924, but little more than a month after the decision

of the Court of Appeals, the Secretary of the Interior sent a communication to the Chairman of the appropriate Committees of the House and Senate with reference to pending legislation. In this communication the Secretary discussed the decision of the Supreme Court of the District of Columbia in the Rives case and also discussed the Chestatee Pyrites & Chemical Company case, wherein was involved expenditures made for the use of borrowed money. The Secretary then proceeded to show that of the $8,500,000 originally appropriated and allowed for claims that would be awarded for items other than the purchase of property and interest on borrowed money, there would remain only the sum of $389,337.38, and the Secretary said:

Letter from Secretary of Interior

"Experience has shown that about 30 per cent of the total amount of all the claims filed has been found to be the actual net losses sustained and payable under the War Minerals Act, and if this approximate per cent shall obtain in the settlement of the remaining 200 claims, aggregating $2,592,276.36, and if all the 248 claims in which no motion for rehearing has yet been filed, involving $1,906,031.57, should be resurrected (but attention is again called to the fact that $3,062,867.50 claimed for losses on purchase of property, $453,608.54 claimed for net losses for mineral rights purchased, and $206,320.30 claimed for interest paid, *making a total* of these items of $3,722,796.34 are *not* included in the aggregate of $4,498,307.93 upon which the calculation of 30 per cent is made), then there will remain of the appropriation $389,337.38 to meet:

(a) $3,062,867.50 claimed for losses on purchase of property;

(b) $206,320.80 for interest paid on borrowed capital;

(c) $453,608.54 for purchase of mineral rights;

(d) Costs of administration;

(e) The probability or possibility of other items not allowed in the past being brought into the problems for adjustment, liquidation, and settlement under the act by litigation just as property losses and interest losses have been brought in. For illustration, if the manufacturers of ferromanganese should enter mandamus proceedings, regardless of the opinion of the Attorney General, and the courts should hold that such losses are legitimate items for repayment, then claims involving more than half a million dollars, which in these figures have been disregarded, would have to be included with those entitled to consideration and adjustment.

"And if none of the 248 claims in which no motion for rehearing has been made should be revived, there would remain of the appropriation to meet the $3,722,796.34 claimed for purchase of property, mining rights, and interest, $961,146.85, making no allowance for cost of administration."

The Secretary concluded his statement by saying:

"This communication is being sent to the Chairmen of the Appropriation Committees of the Senate and House and to the Chairmen of the Mines and Mining Committees of both branches of Congress.

"Will you not confer and give me a reply at your earliest convenience?

"Very truly yours,

(Signed) "HUBERT WORK."

Act of June 7, 1924, and Its Purpose

The Supreme Court of the District of Columbia and the Court of Appeals of the District having decided that purchase of property was an allowable item, the Secretary of the Interior, Mr. Work, having notified Congress that the appropriation was inadequate if such item and the item of interest on borrowed money were allowed, the Congress, on June 7, 1924, struck the limitation of $8,500,000 from the Act, and left in force the original appropriation of $50,000,000.

The act reads:

"(Public—No. 249—68th Congress) (S. 2797)

"An act to authorize the payment of claims under the provisions of the so-called war minerals relief act.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called war minerals act entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended, the limitation in said act on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

"Approved June 7, 1924."

While it is true that this Court held in *Work v. Bigss*, 267 *U. S.* 175, decided May 2, 1925, that the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia had no jurisdiction and therefore reversed such courts, the fact that Congress, with a knowledge that if the decisions of the District courts stood more money would need to be appropriated, made such an additional appropriation shows that Congress acquiesced in the decisions of the Supreme Court of the District of Columbia and of the Court of Appeals.

The Secretary of the Interior must have regarded the matter in a similar light, for he wrote to the Attorney General for guidance thereon. The Attorney General wrote as follows:

The Opinion of Attorney General Sargent

"22113 (Copy—M)

Respectfully referred to the

DEPARTMENT OF THE INTERIOR

for information and guidance.

Chief Clerk.

Department of Justice

Washington

March 23, 1928.

"Sir: I have the honor to acknowledge the receipt of your letters of December 9, 1927, February 25, 1928, and March 9, 1928, in which you request my opinion on the following questions arising in the administration of Section 5 of the

Act of March 2, 1919, c. 94, 40 Stat. 1272, 1274, commonly known as the War Minerals Relief Statute:

"'*First.* Are you authorized to adjust, liquidate and pay net losses sustained in the purchase of real estate?

"'*Second.* Are you authorized to adjust, liquidate and pay net losses arising by reason of interest paid, or payable under obligations to pay, on money borrowed for use by operators in connection with operations under the law?

"In your letter of March 9, 1928, you state that claims of such character have been filed with you for adjustment, allowance and settlement under the Act; that in your administration of the Act you have held that claims of such character are not within the purview of the statute and for that reason have declined to consider them with a view to an adjustment; that some of the claimants, and members of Congress who are giving consideration to the passage of legislation having for its purpose the enlargement of the scope of these statutes to embrace such claims, have recently appeared before you urging that the construction of the law, which has heretofore been followed, is erroneous, and that if correctly interpreted claims of the character mentioned should be reopened and adjusted without further legislation; that you have refused upon their application to recede from the construction adopted or to reconsider such cases with a view to adjustment of losses arising from the classes of claims covered by the questions submitted to me, and you now desire my opinion on the two questions of law.

"Section 5 of the Act provides:

"'That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, * * * by reason of producing or preparing to produce, either manganese, * * * or tungsten in compliance with the request or demand of the Department of the Interior, * * * to supply the urgent needs of the Nation in the prosecution of the war; * * *

"'The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided;

"'* * * *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary, that the expenditures so made or obligations so incurred by the claimant were made in good faith *for or upon property* which contained either manganese, * * * or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese * * * or tungsten for the needs of the Nation

for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, * * * from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded * * *.

* * * * *

" 'That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government in the manner aforesaid.

"Soon after its passage the question arose whether the Act contemplated payment for losses arising from the purchase of real property. Had the bill in its original form become law there would have been no doubt about it, for it contained the words 'or acquiring property for producing,' etc. In the Senate, Senator

Smoot called attention to this language and said:

"'Mr. Smoot, * * * I want to call the attention of the Senator from Nevada to the words 'or acquiring property for producing.' It seems to me that is going too far. I think where a man has purchased a piece of property for producing metals we should not authorize the Secretary of the Treasury (Interior) to go into the question as to what he paid and whether he lost upon the purchase price because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far. I will ask the Senator if it would not be very much better to strike out the words 'or acquiring property for producing.'"—Congr. Rec., 65 Cong., 3rd Sess., 2212, 2213.

"Senator Henderson who apparently had the bill in charge, agreed that the words were omitted. For various weighty reasons, including this bit of legislative history, the then Secretary of the Interior ruled that reimbursement for losses resulting from the purchase of real property was not included in the purpose of the Act. The other question, that of the power of the Secretary under the Act to allow items of interest as an element of loss, arose early in the administration of the Act and was decided in the negative. The Supreme Court has held that the Secretary's construction of the Act in both respects was within the discretion permitted by the statute. *Work v. Rives*, 267 *U. S.* 175; *Work v. Chestatee Pyrites & Chemical Corporation*, 267 *U. S.* 185.

"The history of the administration of the Act contained in the papers submitted with your letters shows that all claims under con-

sideration by you were filed within 90 days after the passage of the Act; that your predecessors in office so construed the Act as to reject both classes of claims, and that that construction has been consistently maintained by you and that all claims filed within the statutory period have been acted upon in accordance with this construction. It further appears that the questions are presented at this time under application to reopen cases thus disposed of. It also appears that the arguments now advanced were then considered and the construction contended for by the claimants rejected.

"Prior to the amendment of November 23, 1921, c. 137, 42 Stat. 322, and during the consideration of the Amendatory Act, Congress was, under a resolution of the Senate of January 19, 1921, advised of the construction of the law adopted and followed by your predecessors. Thereafter the two amendatory acts were passed, neither of which contains language which upon any reasonable theory can be held to overrule or modify the meaning of the original act as thus construed. Of the amendment of November 23, 1921, the Supreme Court has said, 267 U. S. 180:

> " 'This amendment was brought about on the recommendation of the Secretary of the Interior, because he had felt obliged under Section 5 as it was to reject some 600 claims for failure within the time limit to show a direct personal request or demand upon the claimant by the government authorities named in the Act and a response thereto by the claimant and because the Comptroller had refused to pay any changed award of the Secretary made after a rehearing or to correct miscalculation.

"The amendment of June 7, 1924, c. 327, 43 Stat. 636, merely removed the limitation imposed by this Act on the amount to be disbursed in payment of claims. Thus, though Congress has twice amended this section of the Act by liberalizing its provisions in favor of claimants, nevertheless it has not seen fit to amend it so as to make it clearly include claims for losses of the kind covered by your question, though the Department's construction rejecting such claims was distinctly brought to its attention.

"Under such circumstances and irrespective of the reasons upon which the construction first adopted and consistently adhered to was based, or of what my own opinion might be if it were a case of first impression, and passing over the traditionally grave questions of propriety and power which always arise when the head of an executive department undertakes to review and overrule decisions deliberately made by one of his predecessors (compare 2 Ops. A. G. 8; 13 Ops. 32, 287; 15 Ops. 203), I think it must be held that Congress has by acquiescence sanctioned and adopted your construction as a correct interpretation of its intent. I agree fully with the conclusion reached by the Solicitor of your Department that 'you would not be justified, without further legislation authorizing the inclusion of the items referred to, in considering either of them as a proper basis for an award.'

Respectfully,

(Sgd.) JNO. G. SARGENT,
Attorney General."

The Honorable,
The Secretary of the Interior.

The foregoing opinion of the Attorney General was given without reviewing and presumably without a knowledge of the facts as shown above. It may be fairly implied from the language above, which we here emphasize, that if the learned Attorney General had followed his "own opinion"; or if the grave question of "propriety and power" of one Secretary to reverse his predecessor had not existed, his conclusion would have been different. Certainly the full and accurate legislative history was not considered. (Appendix 57, 58.)

Act of February 13, 1929

This Court in the *Rives Case, supra*, having decided that the Secretary of the Interior had a discretion that could not be controlled by the courts, the Congress again evidenced its desire to see payment made to claimants, and on February 13, 1929, there was approved an act taking from the Secretary his discretion as to questions of law.

The act reads:

"(Public—No. 728—70th Congress) (S. 1347)

"An Act to amend an Act entitled 'An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Act (Fortieth Stat-

utes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

"Sec. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

"Sec. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

"Sec. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in ac-

cordance with the law as construed by the court in such judgment or decree.

"Approved, February 18, 1929."

The Congress in Effect Approves Respondent's Claim

If an answer were needed to the suggestion of Attorney General Sargent that "Congress has by acquiescence sanctioned and adopted your (the Secretary's) construction as a correct interpretation of its intent," this act furnishes it. For by this act, Congress unmistakably repudiates the action of the Secretary on all questions of law. If Congress had been willing to sanction and adopt the construction theretofore placed by the Secretary, it would have done nothing. There would have been no occasion to act.

The Committee on Mines and Mining said:

> "The language of the Act * * * is clear and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out * * *. For the reasons above stated the committee has not thought it necessary to amend the original Act." (Ante 26, 27.)

Our conclusion is inevitable, particularly when we consider the question above and the situation as presented to Congress at that time.

After the War Minerals Act was passed in 1919, and the Commission appointed by the Secretary began to administer it, it early became apparent that there was a sharp dispute under the law as to

whether losses suffered in the purchase of property were reimbursable under the act. In 1921 when Congress acted to extend the relief to others than those personally solicited, these questions had not yet been presented to the courts, and there was no reason for Congress to act. By 1924, however, both the Supreme Court and the Court of Appeals of the District of Columbia had decided these questions in favor of the claimants. Congress did not then act in any way so as to disapprove of such result; in fact, it impliedly approved it by voting to remove the limitation on the appropriation available to meet such claims. This was the Act of 1924. Then this court decided in May, 1925, that under the law as it then stood the courts could not review the decisions of the Secretary upon either questions of law or questions of fact. The result of this decision was to deny relief to such claimants, although the line of reasoning announced by the highest court which had attempted to pass upon the merits of the question was favorable to such claimants in every respect.

It was then for the first time that Congress was under compulsion to act if it wished to preserve the relief rights of these claimants. Up to this time (1925) Congress had relied upon the courts to construe the law in harmony with the intent of Congress, and the lower courts had done so. Then in 1925 this court pointed out that the courts lacked jurisdiction to decide these questions in any way. The effect was to leave the decision of the Secretary as final, regardless of whether it was right or

wrong. In this situation, if the conclusion of the Secretary had been satisfactory to Congress, it could have remained silent. But if the practical result reached was unsatisfactory—if its will had been thwarted—one would expect it to act.

Congress acted. It passed this Act of 1929. By doing so, it said, in effect, "Mr. Secretary, you have not construed our act correctly on these two points of law. Your decisions on issues of fact are satisfactory, and we will not change the substantive wording of the original act lest it unsettle the whole matter of relief and invite the filing now of stale claims. When these legal questions were thought to be before the courts, they read our intent correctly. Therefore, we are going to take the decision of these legal questions out of your hands and leave it to the courts, which have already indicated a correct interpretation of our intent."

These facts surrounding the passage of this Act of 1929 show it clearly to have been the intent of Congress to have the courts and not the Secretary pass finally on these disputed questions of law.

But if we leave such outside matters and look into what was said on the floor of Congress when this Act of 1929 was under discussion, our construction is even more definitely confirmed.

The Act of February 13, 1929, was originally introduced in the Senate as S. 1347. This bill provided that the Court of Claims should be the tribunal to pass on these questions of law. In the House, at the same time, had been introduced a bill, H. R.

15861, which had practically the same provisions as the Senate bill, but it provided that the claimants could go to the regular courts. When the Senate bill reached the House, it was referred to the Committee on Mines and Mining, which reported it out after striking out all after the enacting clause and inserting, as the body of the bill, H. R. 15861.

Report of the House Committee

Mr. Robsion, Chairman of the Committee, in reporting the bill, said (Congr. Rec., Feb. 4, 1929, p. 2800):

> "In 1919 Congress passed what is known as the war minerals act. It set aside $8,500,000 to take care of losses in the production of certain minerals during the war. This act gave the Secretary of the Interior entire jurisdiction in hearing and determining both questions of law and questions of fact. Some 1,200 claims have been filed and these have been adjudicated. There remains unexpended nearly $1,000,000.
>
> "There has been much complaint on the part of the various claimants to the effect that the Secretary of the Interior has not properly construed the law. There has been very little objection on the questions of fact.
>
> "All this bill does is simply to give the claimants the right to go to the district court, the court of appeals, and the Supreme Court on the questions of law alone. The action of the Secretary of the Interior under this bill, on questions of fact, is still final and conclusive.
>
> "So it is up to the House to say whether or not we want to give these claimants the right to

go to the courts to have a construction of the law. If the courts construe the law as the Secretary of the Interior construed it, there will be no expenditure; but on the other hand, if the contention as to the law in two important particulars is overturned, it may cost the Government as much as $3,000,000, according to the report of the Secretary of the Interior. We already have something like a million dollars."

A little later, in response to an interrogation as to whether this act did not enlarge the number of claimants, Mr. Wingo said:

"As a matter of fact, all this bill does is to authorize the court to determine a disputed question of law that has arisen in the department, and about which the department itself is in doubt as to what the law is."

Followed by Mr. Robsion again:

"This does not enlarge the act. It does not permit any new claims to be filed. It is merely an authorization for the courts to construe the act, and the Secretary of the Interior will administer it in accordance with the construction by the courts."

Then the following colloquy took place:

"MR. ROBSION of Kentucky. Mr. Speaker, the Secretary of the Interior has ruled that this act does not provide for the repayment of money expended for the purchase of property to produce these minerals. It does not provide for the payment of interest where men borrowed money to go into these mining ventures. The only question now that this bill will open up when the law is construed is: Does the law authorize repayment for the purchase of prop-

erty or the payment of interest that was borrowed to go into these mining operations?

"MR. DYER. Suppose the law does state that, suppose the Supreme Court decided that way, then, of course, if the claims are opened up and allowed, some of these dubious or large claims referred to will, if allowed, necessitate the appropriation of more money than has been appropriated by the Congress.

"MR. ROBSION of Kentucky. According to the report of the Secretary of the Interior, if these two items are allowed under the law, it will not mean more than $3,000,000, and there is today about $1,000,000 of the unexpended appropriation that would be applied. The Secretary says it might cost not more than a million and a half.

"MR. UNDERHILL. Mr. Speaker, will the gentleman yield?

"MR. ROBSION of Kentucky. Yes.

"MR. UNDERHILL. Is it not a fact that the decision of the Secretary of the Interior is based largely upon the assumption that these ventures were largely speculative, and that he did not believe that the Government should attempt to repay these men for money expended or chanced during the war, for the sake of profits?

"MR. ROBSION of Kentucky. That is not his view. He just held that the law does not permit the refund of money paid to buy mineral lands out of which was to be mined these minerals, and that he is not authorized to pay interest on money borrowed to go into this business."

The bill thereupon passed the House, and on February 6, 1929, after a discussion which likewise

made it clear that the purpose of the act was to have the courts pass on the questions of law, the Senate agreed to concur in the House amendment.

Thus when Congress passed this latest act, that of 1929, it was its express intention to take away from the Secretary his discretion to decide that under the law purchase money claimants could not recover, and to leave the decision of this question to the courts. In view of the fact that previous decisions of the courts had been favorable to the claimants on this question and that the decisions of the Secretary had been unfavorable, the only possible conclusion is that Congress disapproved of the Secretary's decisions and wanted those of the courts to be reinstated as controlling. If Congress had amended the War Minerals Act expressly to provide for the recovery of such claims, its intent would not have been more apparent.

Petitioner Agreed that Legislation Authorizing Suits Was Proper

Hearings were had before the passage of the Act of February 13, 1929, the relevant parts of which we insert.

EXCERPTS FROM

HEARINGS

before the

COMMITTEE ON MINES AND MINING

HOUSE OF REPRESENTATIVES

Seventieth Congress

Second Session

on

H. R. 15861

Wednesday, January 23, 1929

Amending the War Minerals Act

House of Representatives

Committee on Mines and Mining

Wednesday, January 23, 1929

The Committee met at 10:30 o'clock A. M., the Hon. John M. Robsion (chairman) presiding.

THE CHAIRMAN. The Committee will come to order. This hearing is directed to H. R. 15861, introduced by Mr. Vinson, of Georgia (Report, p. 1).

(The bill was then copied.)

The Act later passed and approved February 13, 1929, was read and copied in the report.

Statement of Edward C. Finney, First Assistant Secretary of the Interior

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MR. FINNEY. The policy of the department with respect to this, as to all other cases received in the Department of the Interior is this, that the decision of the Secretary of the Interior on the facts should be final. Where the decision of the Secretary involves a construction of law, it is our policy, and the attitude of the Secretary of the Interior, Assistant Secretary Edwards and myself, and Mr. Briar, too, that we have not the slightest objection in the world to that question of law being carried into the courts and determined by the courts. After such determination, of course, it becomes our duty to carry out the law as construed by the courts, so answering specifically your questions, we prepared a proposed report to the Committee expressing that view.

This bill proposes to permit questions of law arising out of the war minerals legislation, and which are in dispute, to be carried into the courts for determination, and our proposed report was to the effect that we favored it. (Report 3.)

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THE CHAIRMAN. How much? Suppose the courts should hold that interest and the purchase of property came within the act, how much, roughly, would that involve?

MR. FINNEY. It would only be an estimate. As you people know, there were 1,268 claims filed. Of course some of these claims have been adjusted, and I assume there is no further dispute on those. Some of the claims have been disallowed. Not all of

the claims, of course, involve *interest* or the *purchase* of property. Some of them may involve some other questions of law. We made a rough estimate some time ago that interest and purchase of property, if allowed, might involve between two and three millions of dollars. That was just an estimate. (Report 3.)

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MR. VINSON. It is a fact, is it not, that the Department of the Interior looks with favor upon the enactment of legislation of this character, that would give the claimants a right to have the legal question determined by the courts?

MR. FINNEY. That was our attitude before we received the communication from the Bureau of the Budget. After having received that communication, we have to bow to it, and the matter is now up to Congress.

MR. VINSON. Then the Department of the Interior would like, would it not, to see Congress submit the question of law, and nothing but the question of law, to the courts for determination, so that the Department of the Interior can conclude from the decision whether or not they have administered the law in accordance with what the law is?

MR. FINNEY. As I stated a moment ago, that is our general attitude on questions of law. We would be very glad to have this or any other questions of law arising in our adjudication of cases, settled by the courts of competent jurisdiction.

MR. VINSON. As Assistant Secretary of the Interior your viewpoint, as that official, is favorable to

the enactment of this legislation and to the purport of this bill?

MR. FINNEY. Yes.

THE CHAIRMAN. It may be put this way; that the Department of the Interior is not opposed.

MR. VINSON. Yes.

THE CHAIRMAN. I mean, they do not invite litigation. I don't think any department should be put in the attitude that they invite litigation.

MR. FINNEY. That is a very good suggestion.

MR. VINSON. And I will adopt it. The Department of the Interior, then, is not opposed to the enactment of this measure?

MR. FINNEY. No. (Report 4.)

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MR. FINNEY. Let me put it in another way. The courts, as I understand it, did not go into the merits; they passed on the technical question as to whether the courts of the District of Columbia, if you please, had the right to review the decisions of the Secretary of the Interior.

THE CHAIRMAN. And right there we find ourselves, in this particular instance, in a little different situation than we generally find, because there is an express provision of the act keeping folks from going to the courts, forbidding them from going to court. In nearly every other instance they have that right to go to court.

MR. FINNEY. Yes. As I said, Mr. Chairman, in most other cases they have a method of getting in,

either through an injunction or request for mandamus. (Report 6.)

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MR. FINNEY. In this way: This bill, as I understand, provides that the decision of the Secretary of the Interior on facts shall still be the final conclusion.

MR. VINSON. And it is not enlarged.

MR. FINNEY. But in any question of law which has arisen or may arise in these cases, whether it shall be one or a hundred of them, the claimants shall have the right to institute a proceeding in the court to get a judicial interpretation of that particular question.

THE CHAIRMAN. Merely to get a construction on the law, and after that is had, if it is adverse to the present ruling of the Secretary of the Interior, then the cases will be adjudicated with that view of the law. (Report 6.)

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MR. MANLOVE. I just want to give a concrete case. One of my constituents expended $15,000 for land, which is absolutely worthless other than for the purpose of mining and producing manganese ore. He put nine hundred and some dollars in equipment. The representatives of the Government allowed him the $900, but they refused to allow him anything on account of the real claim he had, the $15,000 which he had invested in the land. That man wouldn't have the opportunity, under this decision, because probably the question of law does not enter

into it, to have his claim reviewed, as to whether or not he should be repaid the $15,000 for the land.

MR. FINNEY. If I understand your statement, that is a question involving the purchase of property, which is one of the questions we have decided adversely to the claimants. We have said, in substance, 'You still have that property, and we are not authorized, under this law, as we construe it, to reimburse what you have paid.' The claimants say that is wrong. They say, 'We bought this property for what it was worth for manganese or some other mineral. After the war it didn't pay to mine the property and it was of no use and it was a loss. (Report 7.)

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THE CHAIRMAN. As I understand this, I don't see the use of more than one case going through the courts, because you are merely going to construe the law. Then it will be up to the department to adjudicate the cases according to the law laid down by the courts.

MR. GREENWOOD. Probably they would take the strongest case, go to the court and get an adjudication of that.

THE CHAIRMAN. You don't need even the strongest case. The question of facts is not going to enter into this. They are going to read the law, and perhaps read the proceedings had in Congress, to know what was the intent and purpose and scope of that act as provided by the Congress. They will then merely construe it.

MR. GREENWOOD. But every law suit is based upon—

THE CHAIRMAN. You are assuming that the court is going into the facts. I don't understand that to be the purpose of this bill.

MR. VINSON. It doesn't permit the court to consider the facts at all. It merely construes the law.

THE CHAIRMAN. And that is the thought in everybody's mind about it. The Department of the Interior has said it does not embrace *interest* or *capital cost*, cost for the *purchase of property*.

MR. VINSON. Interest and capital invested.

THE CHAIRMAN. Capital invested in the purchase of property, or interest on borrowed capital. Now, it will go to the courts for a decision on those two questions.

MR. VINSON. As a matter of law.

THE CHAIRMAN. As a matter of law. Not on anybody's case, or anybody's facts. (Report 9.)

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MR. FINNEY. Let me explain a little further. Also let me preface that, Mr. Chairman, by saying that as I understand this bill, it is broader than you have outlined. You have touched upon two questions only, the purchase of property, the capital investment, and interest. This bill would also permit other questions of law to be carried into the courts. There may be some cases that involve some other question of law beside those two. Now, as to your

question. In the case to which you refer, and I don't know which case it is—

MR. MANLOVE. We will just use it as a hypothetical case for the purpose of illustration.

MR. FINNEY. That man expended $15,000, which he said was expended in buying a piece of ground which is now worthless, and which he intended to use as a mine?

MR. MANLOVE. Yes.

MR. FINNEY. After the war he says the land became absolutely worthless, and it resulted in a loss to him.

MR. MANLOVE. That will be admitted.

MR. FINNEY. A loss of the $15,000 invested. This bill would permit him, or one in a like situation, to go into court and determine whether the Secretary of the Interior is right when he construes the law to say that kind of a claim is not payable under the war minerals act. If the court said that it was payable, that a capital investment of that amount was repayable under the war minerals act, then the Secretary of the Interior would be set right on the law, and he would have to carry it out and administer it. Then he goes back to the facts in that man's case. Did he pay $15,000, or did he pay $13,000? Is the land worth today $5,000, or is it worth nothing? (Report 9, 10.)

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Statement of John H. Edwards, Assistant Secretary of the Interior. (Report 10)

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MR. EDWARDS. The Interior Department is willing at all times for all questions of law to be determined by the courts. If the Department of the Interior has misconstrued an act, the department is anxious that the proper construction be placed upon it. Of course, there are always differences of opinion as to what is the proper construction of an act. Those differences are never settled until some court settles them. That is the attitude of the department on this proposed bill, and all other laws, and I may say that is borne out in the administration of the war minerals act by the frequent requests made for a construction of the act by the Solicitor of the Interior Department on the several questions submitted to the Attorney General, and we always, in the administration of an act, follow the legal advisers.

MR. HARE. I gather, then, from your statement, Judge, that the department has not only no objection to this legislation, but in order that the situation might be clarified, the department would welcome such legislation to interpret these acts with reference to this mineral act?

MR. EDWARDS. Your view is my view exactly. The Congress said by this act that the Secretary of the Interior was the sole and exclusive judge of the law and the facts. I mean the present law. Now, if the Department of the Interior has misconstrued the present law, then we have denied to claimants that

which they are rightfully entitled to have under a proper construction. (Report 11.)

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MR. SPROUL. But the point I am asking about is this: Hasn't there been dissatisfaction on the part of the claimants over the amount of money determined to have been their losses, independent of questions of law?

MR. EDWARDS. There has been dissatisfaction, I think, however, not so pronounced, over the settlement on the facts. There always would be. A claimant says, 'I am entitled to $100,000.' The department goes into the facts and says, 'No, you are entitled to $50,000.' Of course, he is dissatisfied, but I think in the vast majority of cases the claimants have recognized the fact that they have been fairly treated on the facts.

MR. SPROUL. What per cent of the claims contain these law controversies?

MR. EDWARDS. All claims that contain an item of *loss on property*, all claims that include the *item of interest*. (Report 12.)

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MR. EDWARDS. Of course, the War Minerals Act goes back to the spring of 1919, and that was before I was connected with the department, but the Attorney General has passed on a great number of these questions, and I think perhaps all of the major questions, except the loss of property and interest, and he did pass upon that, in a way. I think he did not go into the merits of it, however.

MR. SPROUL. Did he confirm your attitude?

MR. EDWARDS. Yes; in a decision that did not go into the merits of it. That was very late. In fact, the administration was virtually closed when that question was submitted to the Attorney General, and it was submitted after a conference of Senators and Representatives with the Secretary of the Interior. (Report 13.)

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MR. MANLOVE. Whether any one of the three of you would have any feeling whatever upon the question of the courts passing upon your decision in the matter.

MR. EDWARDS. Absolutely not. We are perfectly willing. In fact, if you would ask me my preference in the matter, I would state to you that I would prefer to have the opinion of the courts. Then I would know that I had not, through some interpretation placed upon it by me or followed by me, done anybody an injustice.

MR. MANLOVE. And if you have, you would be anxious and willing to have the matter properly adjudicated?

MR. EDWARDS. Absolutely.

MR. VINSON. And the opinion of the court would be in final settlement of this matter for all time to come?

MR. EDWARDS. There is no question about it, because it would remove from the realm of controversy and doubt the question. The Interior Department as well as the claimants would have to accept that as a finality. (Report 14.)